

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 823 of 1997

in

SPECIAL CIVIL APPLICATION No 9847 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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Versus

GUJARAT MAZDOOR PANCHAYAT

Appearance:

MR. K.S.NANAVATI for appellants.

MR. HM MEHTA instructed by VASAVDATTA BHATT
for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MISS JUSTICE R.M.DOSHIT

Date of decision: 16/10/97

ORAL JUDGEMENT

Admitted. Ms. Vasavdatta Bhatt, learned advocate appears and waives service of notice of admission on behalf of respondent No.1. So far as other respondents are concerned, they are not concerned or

affected by interim order impugned in this appeal. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against an interim order passed by the learned Single Judge on July 22, 1997, in Special Civil Application No. 9847 of 1996. In the operative part of the order, the learned Single Judge stated;

" Looking to the totality of the facts and the circumstances attendant and preceding to the issue of strike or lockout legal or illegal, and the matter being subjudice before this court after the issue of Rule, I deem it appropriate to direct respondents nos. 1 and 2 to allow the abovenamed 22 employees to resume their duties immediately but in no case later than 1-8-1997. Ordered accordingly. It is however made clear that none of these employees shall be entitled to wages for the past period for which they have not worked and they will be entitled to wages only from the date they resume work forthwith ".

The appellant company is respondent in the petition. The petitioner preferred the above petition for an appropriate writ, direction or order directing the authorities under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") to refer the matter for adjudication of certain disputes . A prayer was also made to prosecute respondent No.2 Director of the Company for illegal lockout and unfair labour practice. Interim relief was prayed under paragraph 6 (D), which reads as under :

" Pending admission, hearing and final disposal of this petition, to issue an interim direction requiring the respondent company and the Director (respondent no.2) to allow the workmen of the company employed in the company's Printing Press at Dantali (Gandhinagar District) to resume their duties without furnishing any undertaking of bond"

In paragraph 6 (E) other and further reliefs were sought.

The learned Single Judge was of the view that the matter required consideration . Rule was thereafter issued. The matter is pending for final hearing. In the meantime, however, 22 employees who were ready to resume duties and who had filed undertakings as given by other employees and yet not taken on duty, were ordered to be allowed to perform their duties immediately and in no case later than 1st August, 1997. Being aggrieved by that order, the company has approached this court.

We have heard Mr. K.S.Nanavati, learned counsel for the appellant and Mr. H.M.Mehta, learned counsel instructed by Ms.Vasavdatta Bhatt for the respondents. Mr.Nanavati raised various contentions. He contended that the appellant is a Private Company and it can not be said to be "State" or "other authority" within the meaning of Article 12 of the Constitution of India and no petition would lie. He further submitted that interim relief granted by the learned Single Judge is virtually final relief, which could not have been granted at admission stage. Moreover, the relief is not prohibitory and/or preventive, but mandatory in nature as the learned Single Judge directed the Company to permit employees to work. It is doubtful, according to the learned counsel for the appellant, as to whether such a relief could be granted even at final hearing stage. In any case, when the petition is pending, no such relief could have been granted by interim order. Mr. Nanavati further submitted that when maintainability of the petition itself is doubtful, how that the learned Single Judge could have directed the Company to permit employees to work. According to him, therefore, appeal deserves to be admitted and interim relief against the order passed by the learned Single Judge deserves to be granted.

Mr. Mehta, learned counsel for the respondent, on the other hand submitted that no interference is called for at this stage when the main matter is pending and Rule is issued. Order is merely interlocutory in nature. Apart from the fact that the order is legal and could have been passed by the learned Single Judge, it is just, fair and equitable. According to Mr. Mehta, the fact that various employees who had given undertakings,

were permitted to resume duties by the Company itself. The other employees who had approached this court and who had not given similar undertakings, had already given undertakings thereafter. Such undertakings were furnished in court, copies thereof were also supplied to the management. If taking into account this important circumstance, the learned Single Judge granted the relief, it could not be said that the order is illegal or improper. According to Mr. Mehta, the case is of unfair labour practice. The action being preventive, need not be interfered with. He submitted that mandatory relief can also be granted by the court. He, however, requested the court that the employees do not insist to work and in the facts and circumstances, the court may not finally decide the point raised by the Company at this stage. The employees will be satisfied if company is ordered to pay wages to them.

We may make it clear that we are not expressing any opinion on the merits of the matter as it may prejudice either the petitioner or the respondents in a pending matter. In our opinion, the order passed by the learned Single Judge granting benefits in favour of the workmen could not be said to be illegal in view of the fact that those employees who had already furnished undertakings were continued in service and those who had not furnished undertakings initially but subsequently furnished them before the learned Single Judge in Special Civil Application No. 9847 of 1997. If that fact weighed with the learned Single Judge, it could not be said that the order passed on the basis of such undertakings is unlawful or otherwise unreasonable. The learned Single Judge has also taken care to see that since they had filed undertakings subsequently, they would not be entitled to wages for the period prior to it. Thus, the order passed by the learned Single Judge takes into account interests of all the parties.

So far as the mandatory part of the order is concerned, a statement was made by Mr. Mehta, learned counsel for the petitioners that if the company does not utilise services of the employees, they will not insist for resumption. We may clarify that it is open to the Company to permit the workmen to work. In any case, they would be entitled to payment of wages.

For the foregoing reasons, appeal is partly allowed. In the facts and circumstances of the case, there shall be no order as to costs.

Mr. Mehta, the learned counsel for the petitioners submitted that the petitioners are ready to go on with the matter. Mr. Nanavati also submitted that in the facts and circumstances of the case, it would be proper if the matter is expeditiously disposed of. It is open to the learned counsel for the parties to request the learned Single Judge for early disposal of the matter. We have no doubt that as and when such request is made, the learned Single Judge will give due consideration to this aspect.

We may make it clear that the observations made hereinabove have been made for the purpose of disposal of this Letters Patent Appeal and as and when the main matter will be taken up for final hearing, the learned Single Judge will decide the petition on its own merits without being influenced by the observations made by us.

Appeal is accordingly disposed of. In the facts and circumstances, no order as to costs.

JOSHI